

IN THE HIGH COURT OF BOMBAY AT GOA
MISC.CIVIL APPLICATION NO. 138 OF 2017
IN
PUBLIC INTEREST LITIGATION WP NO. 26 OF 2016

THE GOA FOUNDATION, THR. ITS
SECRETARY, DR. CLAUDE ALVARES., ... Applicant
Versus
STATE OF GOA, THR. ITS CHIEF
SECRETARY AND 7 ORS., ... Respondents

Ms. Norma Alvares with Ms. A. Fernandes, Advocates for the applicant/petitioner.
Shri S. D. Lotlikar, Advocate General with Shri D. Shirodkar, AGA for the respondents no.1 to 5.
Shri N. N. Sardessai, Senior Advocate with Ms. R. Kantak, Advocate for the respondent no.8.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 14th February, 2017

P.C.

Heard the learned counsel appearing for the respective parties.

2. This application filed by the applicant/the petitioner in the above writ petition inter alia prays for an ad-interim relief against the respondent no.8 from continuing any work either of dumping or bulldozing it for dumping mud and other operations in the complex Survey nos.170/1 and 171/1 of Quelossim village. The learned counsel appearing for the applicant submits that on the

last date of hearing on the basis of the statement of the learned Advocate General that the direction issued by GCZMA not to carry out any civil work at the site would be complied with, no ad-interim orders were passed by the Court. It is further pointed out that to the surprise of the applicant after the said order passed on 7th February, 2017 the petitioner found that some dumping and excavation of mud was being carried out at the subject site even with the help of heavy machinery such as Excavator etc. The learned counsel has further points out that the main concern of the petitioner is to ensure that no development activity is carried out in the CRZ area based on an alleged in-principle recommendation obtained from the Investment Promotion Board (IPB). The learned counsel submits that the challenge in the main petition is that the IPB is not entitled to make any recommendation in the CRZ area and Khazan area. The learned counsel further points out that as the activity being carried out by the respondent no.3 would lead to an irretrievable situation thereby totally damaging and changing the nature of the Khazan land, an interim order be passed against the respondent no.8 from carrying out any development work in the property survey nos.170/1 and 171/1. The learned counsel in support of the said contention has placed photographs on record to point out that there is excavation and mud is being filled up in Khazan areas adjacent to the river which have to be stopped forthwith. The learned counsel as such submits that an ad-interim relief sought

by the petitioner be accordingly granted.

3. Shri Nitin Sardessai, learned Senior Counsel appearing for the respondent no.8 has strongly opposed any relief being granted against the respondent no.8. The learned Senior Counsel points out that any observations by this Court with regard to the controversy raised would prejudice the stand of the respondent no.8 before GCZMA who has served the respondent no.8 with a show cause notice. The learned Senior Counsel has thereafter taken us through para 8 of the affidavit-in-reply wherein it is stated inter alia that the respondent no.8 has not carried out any civil work in the CRZ area of the property survey no.170/1 and that no construction activity would be carried out even in the remaining area which is not CRZ area of the property surveyed under no.170/1. Shri Sardessai, learned Senior Counsel appearing for the respondent no.8, upon instructions, has pointed out that no civil construction work is being carried out in the property ad-measuring 95000 square meters which is the subject matter of the disputed in-principle recommendations granted by the IPB.

4. The learned counsel appearing for the petitioner in reply to the said contentions has brought to our notice that the photographs placed on record suggest that the work of filling of mud and levelling the ground is being carried out by an

Excavator at the site adjacent to the river. The photographs brought to our notice are at page nos.12 to 15 which are marked X for identification. Shri Sardesai, learned Senior Counsel appearing for the respondent no.3 however disputes that the area shown in such photographs is a part and parcel of the property of the respondent no.8. It is further pointed out that the activity suggested from such photographs is not being carried out by the respondent no.8 but by occupants of the property surveyed under nos.181 and 182 of the said village.

5. We have considered the submissions of the learned counsel and we have also gone through the record.

6. As far as the relief sought by the petitioner against the respondent no.8 with regard to the subject area of 95000 square meters which is the subject matter of IPB in-principle recommendations, in view of the statement of Shri Sardesai, learned Senior Counsel appearing for the respondent no.8 upon instructions that no civil work or any dumping or excavation will be carried out in such area, which is accepted, no further reliefs are required to be granted with that regard. Needless to say that all the contentions of both the parties with regard to such activity before the competent authorities wherein the respondent no.8 is facing a show cause notice are left open.

7. On perusal of the said photographs pointed out by Ms. Alvares, learned counsel appearing for the petitioner, we find that there is a vast area which is being excavating and mud is being filled up therein. The area prima facie is adjacent to the river and stated to be in the vicinity of the subject area. The photographs further suggest that there is total blanket change of user of the land adjoining such river. Though it was contended by the petitioner that such area is part and parcel of the property belonging to the respondent no.8 which is seriously disputed by the respondent no.8, we find that considering the above petition is a Public Interest Litigation to protect environment degradation in CRZ area and Khazan lands which are claimed to be covered by the CRZ Regulation, we find that it is expected of the statutory authorities to take immediate action to ensure that such activities are not carried out in blanket violation of the relevant Laws. In such circumstances, we direct the Mamlatdar of the concerned area to forthwith take all measures to ensure that any machinery used for excavation or dumping of mud is seized and take all further measures to ensure that no dumping or excavation of mud is carried out in the locations as depicted in the photographs on page nos. 12 to 16 of the above application until next date of hearing. A copy of the photographs has already been submitted to the learned Advocate General appearing for the State Government to enable that further action in the matter is taken immediately.

8. The above application stands disposed of with the aforesaid directions and accepting the statement of the learned Senior Counsel appearing for the respondent no.8 upon instructions as stated above. Needless to say that the observations made herein with regard to the subject land are tentative findings which will not influence the Authority to take a view on its own merits in accordance with law.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

mukund